

§ 4046. Advisory board**(a) Establishment and membership**

Notwithstanding any other provision of law, the Special Trustee shall establish an advisory board to provide advice on all matters within the jurisdiction of the Special Trustee. The advisory board shall consist of nine members, appointed by the Special Trustee after consultation with Indian tribes and appropriate Indian organizations, of which—

(1) five members shall represent trust fund account holders, including both tribal and individual Indian Money accounts;

(2) two members shall have practical experience in trust fund and financial management;

(3) one member shall have practical experience in fiduciary investment management; and

(4) one member, from academia, shall have knowledge of general management of large organizations.

(b) Term

Each member shall serve a term of two years.

(c) FACA

The advisory board shall not be subject to the Federal Advisory Committee Act.

(d) Termination

The advisory board shall terminate upon termination of the Office of Special Trustee.

(Pub. L. 103-412, title III, §306, Oct. 25, 1994, 108 Stat. 4249; Pub. L. 104-109, §6(b), Feb. 12, 1996, 110 Stat. 764.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (c), is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

AMENDMENTS

1996—Subsec. (d). Pub. L. 104-109 substituted “advisory board” for “Advisory Board”.

SUBCHAPTER IV—AUTHORIZATION OF APPROPRIATIONS**§ 4061. Authorization of appropriations**

There is authorized to be appropriated such sums as may be necessary to carry out the provisions of this chapter.

(Pub. L. 103-412, title IV, §401, Oct. 25, 1994, 108 Stat. 4249.)

CHAPTER 43—NATIVE AMERICAN HOUSING ASSISTANCE AND SELF-DETERMINATION

Sec.

4101. Congressional findings.

4102. Administration through Office of Native American Programs.

4103. Definitions.

SUBCHAPTER I—BLOCK GRANTS AND GRANT REQUIREMENTS

4111. Block grants.

(a) Authority.

(b) Plan requirement.

(c) Local cooperation agreement.

(d) Exemption from taxation.

(e) Effect of failure to exempt from taxation.

Sec.

(f) Amount.

(g) Use for affordable housing activities under plan.

(h) Administrative expenses.

(i) Public-private partnerships.

4112. Indian housing plans.

(a) Plan submission.

(b) 5-year plan.

(c) 1-year plan.

(d) Participation of tribally designated housing entity.

(e) Coordination of plans.

(f) Plans for small tribes.

(g) Regulations.

4113. Review of plans.

(a) Review and notice.

(b) Notice of reasons for determination of noncompliance.

(c) Review.

(d) Updates to plan.

(e) Effective date.

4114. Treatment of program income and labor standards.

(a) Program income.

(b) Labor standards.

4115. Environmental review.

(a) In general.

(b) Procedure.

(c) Certification.

4116. Regulations.

(a) Transition requirements.

(b) Final regulations.

(c) Effective date.

4117. Authorization of appropriations.

SUBCHAPTER II—AFFORDABLE HOUSING ACTIVITIES

4131. National objectives and eligible families.

(a) Primary objective.

(b) Eligible families.

4132. Eligible affordable housing activities.

4133. Program requirements.

(a) Rents.

(b) Maintenance and efficient operation.

(c) Insurance coverage.

(d) Eligibility for admission.

(e) Management and maintenance.

4134. Types of investments.

(a) In general.

(b) Investments.

4135. Low-income requirement and income targeting.

(a) In general.

(b) Exception.

4136. Certification of compliance with subsidy layering requirements.

4137. Lease requirements and tenant selection.

(a) Leases.

(b) Tenant selection.

4138. Availability of records.

(a) Provision of information.

(b) Exception.

(c) Confidentiality.

4139. Repayment.

4140. Continued use of amounts for affordable housing.

SUBCHAPTER III—ALLOCATION OF GRANT AMOUNTS

4151. Annual allocation.

4152. Allocation formula.

(a) Establishment.

(b) Factors for determination of need.

(c) Other factors for consideration.

(d) Funding for public housing operation and modernization.

(e) Effective date.

SUBCHAPTER IV—COMPLIANCE, AUDITS, AND REPORTS

4161. Remedies for noncompliance.

- Sec.
- (a) Actions by Secretary affecting grant amounts.
 - (b) Noncompliance because of technical incapacity.
 - (c) Referral for civil action.
 - (d) Review.
4162. Replacement of recipient.
- (a) Authority.
 - (b) Conditions of removal.
 - (c) Choice and term of replacement.
4163. Monitoring of compliance.
- (a) Enforceable agreements.
 - (b) Periodic monitoring.
 - (c) Performance measures.
4164. Performance reports.
- (a) Requirement.
 - (b) Content.
 - (c) Submission.
 - (d) Public availability.
4165. Review and audit by Secretary.
- (a) Annual review.
 - (b) Report by Secretary.
 - (c) Effect of reviews.
4166. GAO audits.
4167. Reports to Congress.
- (a) In general.
 - (b) Related reports.

SUBCHAPTER V—TERMINATION OF ASSISTANCE FOR INDIAN TRIBES UNDER INCORPORATED PROGRAMS

4181. Termination of Indian housing assistance under United States Housing Act of 1937.
- (a) Termination of assistance.
 - (b) Termination of restrictions on use of Indian housing.
4182. Termination of new commitments for rental assistance.
4183. Savings provision.
- (a) Existing rights and duties.
 - (b) Obligations under repealed provisions.

SUBCHAPTER VI—FEDERAL GUARANTEES FOR FINANCING FOR TRIBAL HOUSING ACTIVITIES

4191. Authority and requirements.
- (a) Authority.
 - (b) Lack of financing elsewhere.
 - (c) Terms of loans.
 - (d) Limitation on outstanding guarantees.
4192. Security and repayment.
- (a) Requirements on issuer.
 - (b) Repayment from grant amounts.
 - (c) Full faith and credit.
4193. Payment of interest.
4194. Training and information.
4195. Limitations on amount of guarantees.
- (a) Aggregate fiscal year limitation.
 - (b) Authorization of appropriations for credit subsidy.
 - (c) Aggregate outstanding limitation.
 - (d) Fiscal year limitations on tribes.

SUBCHAPTER VII—OTHER HOUSING ASSISTANCE FOR NATIVE AMERICANS

4211. 50-year leasehold interest in trust or restricted lands for housing purposes.
- (a) Authority to lease.
 - (b) Term.
 - (c) Rule of construction.
 - (d) Self-implementation.
4212. Training and technical assistance.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 12 section 1715z-13a; title 42 section 11905.

§ 4101. Congressional findings

The Congress finds that—

(1) the Federal Government has a responsibility to promote the general welfare of the Nation—

(A) by using Federal resources to aid families and individuals seeking affordable homes in safe and healthy environments and, in particular, assisting responsible, deserving citizens who cannot provide fully for themselves because of temporary circumstances or factors beyond their control;

(B) by working to ensure a thriving national economy and a strong private housing market; and

(C) by developing effective partnerships among the Federal Government, State, tribal, and local governments, and private entities that allow government to accept responsibility for fostering the development of a healthy marketplace and allow families to prosper without government involvement in their day-to-day activities;

(2) there exists a unique relationship between the Government of the United States and the governments of Indian tribes and a unique Federal responsibility to Indian people;

(3) the Constitution of the United States invests the Congress with plenary power over the field of Indian affairs, and through treaties, statutes, and historical relations with Indian tribes, the United States has undertaken a unique trust responsibility to protect and support Indian tribes and Indian people;

(4) the Congress, through treaties, statutes, and the general course of dealing with Indian tribes, has assumed a trust responsibility for the protection and preservation of Indian tribes and for working with tribes and their members to improve their housing conditions and socioeconomic status so that they are able to take greater responsibility for their own economic condition;

(5) providing affordable homes in safe and healthy environments is an essential element in the special role of the United States in helping tribes and their members to improve their housing conditions and socioeconomic status;

(6) the need for affordable homes in safe and healthy environments on Indian reservations, in Indian communities, and in Native Alaskan villages is acute and the Federal Government should work not only to provide housing assistance, but also, to the extent practicable, to assist in the development of private housing finance mechanisms on Indian lands to achieve the goals of economic self-sufficiency and self-determination for tribes and their members; and

(7) Federal assistance to meet these responsibilities should be provided in a manner that recognizes the right of Indian self-determination and tribal self-governance by making such assistance available directly to the Indian tribes or tribally designated entities under authorities similar to those accorded Indian tribes in Public Law 93-638 (25 U.S.C. 450 et seq.).

(Pub. L. 104-330, § 2, Oct. 26, 1996, 110 Stat. 4017.)

REFERENCES IN TEXT

Public Law 93-638, referred to in par. (7), is Pub. L. 93-638, Jan. 4, 1975, 88 Stat. 2203, as amended, known as

the Indian Self-Determination and Education Assistance Act, which is classified principally to subchapter II (§ 450 et seq.) of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

EFFECTIVE DATE

Section 107 of Pub. L. 104-330 provided that: "Except as otherwise expressly provided in this Act [see Short Title note below], this Act and the amendments made by this Act shall take effect on October 1, 1997."

SHORT TITLE

Section 1(a) of Pub. L. 104-330 provided that: "This Act [enacting this chapter and section 12899h-1 of Title 42, The Public Health and Welfare, amending sections 1715z-13a and 1721 of Title 12, Banks and Banking, and sections 1437a, 1437c to 1437e, 1437g, 1437i, 1437n, 1437u to 1437x, 1437aaa-5, 1437aaa-6, 1439, 11371 to 11376, 11382, 11401, 11403g, 11408, 11902 to 11905, 12747, and 12838 of Title 42, repealing sections 1437aa to 1437ee of Title 42, enacting provisions set out as notes under this section and sections 4181 and 4211 of this title and sections 11371, 12747, and 12899h-1 of Title 42, amending provisions set out as a note under section 11301 of Title 42, and repealing provisions set out as a note under section 1701z-6 of Title 12] may be cited as the 'Native American Housing Assistance and Self-Determination Act of 1996'."

§ 4102. Administration through Office of Native American Programs

The Secretary of Housing and Urban Development shall carry out this chapter through the Office of Native American Programs of the Department of Housing and Urban Development.

(Pub. L. 104-330, § 3, Oct. 26, 1996, 110 Stat. 4018.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 104-330, Oct. 26, 1996, 110 Stat. 4016, known as the Native American Housing Assistance and Self-Determination Act of 1996. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of this title and Tables.

EFFECTIVE DATE

Section effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104-330, set out as a note under section 4101 of this title.

§ 4103. Definitions

For purposes of this chapter, the following definitions shall apply:

(1) Adjusted income

The term "adjusted income" means the annual income that remains after excluding the following amounts:

(A) Youths, students, and persons with disabilities

\$480 for each member of the family residing in the household (other than the head of the household or the spouse of the head of the household)—

- (i) who is under 18 years of age; or
- (ii) who is—
 - (I) 18 years of age or older; and
 - (II) a person with disabilities or a full-time student.

(B) Elderly and disabled families

\$400 for an elderly or disabled family.

(C) Medical and attendant expenses

The amount by which 3 percent of the annual income of the family is exceeded by the aggregate of—

- (i) medical expenses, in the case of an elderly or disabled family; and
- (ii) reasonable attendant care and auxiliary apparatus expenses for each family member who is a person with disabilities, to the extent necessary to enable any member of the family (including a member who is a person with disabilities) to be employed.

(D) Child care expenses

Child care expenses, to the extent necessary to enable another member of the family to be employed or to further his or her education.

(E) Earned income of minors

The amount of any earned income of any member of the family who is less than 18 years of age.

(F) Travel expenses

Excessive travel expenses, not to exceed \$25 per family per week, for employment- or education-related travel.

(G) Other amounts

Such other amounts as may be provided in the Indian housing plan for an Indian tribe.

(2) Affordable housing

The term "affordable housing" means housing that complies with the requirements for affordable housing under subchapter II of this chapter. The term includes permanent housing for homeless persons who are persons with disabilities, transitional housing, and single room occupancy housing.

(3) Drug-related criminal activity

The term "drug-related criminal activity" means the illegal manufacture, sale, distribution, use, or possession with intent to manufacture, sell, distribute, or use, of a controlled substance (as such term is defined in section 802 of title 21).

(4) Elderly families and near-elderly families

The terms "elderly family" and "near-elderly family" mean a family whose head (or his or her spouse), or whose sole member, is an elderly person or a near-elderly person, respectively. Such terms include 2 or more elderly persons or near-elderly persons living together, and 1 or more such persons living with 1 or more persons determined under the Indian housing plan for the agency to be essential to their care or well-being.

(5) Elderly person

The term "elderly person" means a person who is at least 62 years of age.

(6) Family

The term "family" includes a family with or without children, an elderly family, a near-elderly family, a disabled family, and a single person.

(7) Grant beneficiary

The term "grant beneficiary" means the Indian tribe or tribes on behalf of which a grant is made under this chapter to a recipient.

(8) Income

The term “income” means income from all sources of each member of the household, as determined in accordance with criteria prescribed by the Secretary, except that the following amounts may not be considered as income under this paragraph:

(A) Any amounts not actually received by the family.

(B) Any amounts that would be eligible for exclusion under section 1382b(a)(7) of title 42.

(9) Indian

The term “Indian” means any person who is a member of an Indian tribe.

(10) Indian area

The term “Indian area” means the area within which a tribally designated housing entity is authorized by one or more Indian tribes to provide assistance under this chapter for affordable housing.

(11) Indian housing plan

The term “Indian housing plan” means a plan under section 4112 of this title.

(12) Indian tribe**(A) In general**

The term “Indian tribe” means a tribe that is a federally recognized tribe or a State recognized tribe.

(B) Federally recognized tribe

The term “federally recognized tribe” means any Indian tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act [43 U.S.C. 1601 et seq.], that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians pursuant to the Indian Self-Determination and Education Assistance Act of 1975 [25 U.S.C. 450 et seq.].

(C) State recognized tribe**(i) In general**

The term “State recognized tribe” means any tribe, band, nation, pueblo, village, or community—

(I) that has been recognized as an Indian tribe by any State; and

(II) for which an Indian Housing Authority has, before the effective date under section 107, entered into a contract with the Secretary pursuant to the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.] for housing for Indian families and has received funding pursuant to such contract within the 5-year period ending upon such effective date.

(ii) Conditions

Notwithstanding clause (i)—

(I) the allocation formula under section 4152 of this title shall be determined for a State recognized tribe under tribal membership eligibility criteria in existence on October 26, 1996; and

(II) nothing in this paragraph shall be construed to confer upon a State recognized tribe any rights, privileges, responsibilities, or obligations otherwise accorded groups recognized as Indian tribes by the United States for other purposes.

(13) Low-income family

The term “low-income family” means a family whose income does not exceed 80 percent of the median income for the area, as determined by the Secretary with adjustments for smaller and larger families, except that the Secretary may, for purposes of this paragraph, establish income ceilings higher or lower than 80 percent of the median for the area on the basis of the findings of the Secretary or the agency that such variations are necessary because of prevailing levels of construction costs or unusually high or low family incomes.

(14) Median income

The term “median income” means, with respect to an area that is an Indian area, the greater of—

(A) the median income for the Indian area, which the Secretary shall determine; or

(B) the median income for the United States.

(15) Near-elderly person

The term “near-elderly person” means a person who is at least 55 years of age and less than 62 years of age.

(16) Nonprofit

The term “nonprofit” means, with respect to an organization, association, corporation, or other entity, that no part of the net earnings of the entity inures to the benefit of any member, founder, contributor, or individual.

(17) Person with disabilities

The term “person with disabilities” means a person who—

(A) has a disability as defined in section 423 of title 42;

(B) is determined, pursuant to regulations issued by the Secretary, to have a physical, mental, or emotional impairment which—

(i) is expected to be of long-continued and indefinite duration;

(ii) substantially impedes his or her ability to live independently; and

(iii) is of such a nature that such ability could be improved by more suitable housing conditions; or

(C) has a developmental disability as defined in section 6001 of title 42.

Such term shall not exclude persons who have the disease of acquired immunodeficiency syndrome or any conditions arising from the etiologic agent for acquired immunodeficiency syndrome. Notwithstanding any other provision of law, no individual shall be considered a person with disabilities, for purposes of eligibility for housing assisted under this chapter, solely on the basis of any drug or alcohol dependence. The Secretary shall consult with other appropriate Federal agencies to implement the preceding sentence.

(18) Recipient

The term “recipient” means an Indian tribe or the entity for one or more Indian tribes

that is authorized to receive grant amounts under this chapter on behalf of the tribe or tribes.

(19) Secretary

Except as otherwise specifically provided in this chapter, the term “Secretary” means the Secretary of Housing and Urban Development.

(20) State

The term “State” means the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, and any other territory or possession of the United States and Indian tribes.

(21) Tribally designated housing entity

The terms “tribally designated housing entity” and “housing entity” have the following meaning:

(A) Existing IHA's

With respect to any Indian tribe that has not taken action under subparagraph (B), and for which an Indian housing authority—

(i) was established for purposes of the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.] before October 26, 1996, that meets the requirements under the United States Housing Act of 1937,

(ii) is acting on October 26, 1996, as the Indian housing authority for the tribe, and

(iii) is not an Indian tribe for purposes of this chapter,

the terms mean such Indian housing authority.

(B) Other entities

With respect to any Indian tribe that, pursuant to this chapter, authorizes an entity other than the tribal government to receive grant amounts and provide assistance under this chapter for affordable housing for Indians, which entity is established—

(i) by exercise of the power of self-government of one or more Indian tribes independent of State law, or

(ii) by operation of State law providing specifically for housing authorities or housing entities for Indians, including regional housing authorities in the State of Alaska,

the terms mean such entity.

(C) Establishment

A tribally designated housing entity may be authorized or established by one or more Indian tribes to act on behalf of each such tribe authorizing or establishing the housing entity.

(Pub. L. 104-330, § 4, Oct. 26, 1996, 110 Stat. 4018.)

REFERENCES IN TEXT

The Alaska Native Claims Settlement Act, referred to in par. (12)(B), is Pub. L. 92-203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

The Indian Self-Determination and Education Assistance Act of 1975, referred to in par. (12)(B), probably means the Indian Self-Determination and Education Assistance Act which is Pub. L. 93-638, Jan. 4, 1975, 88 Stat. 2203, as amended, and is classified principally to subchapter II (§450 et seq.) of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

For the effective date under section 107, referred to in par. (12)(C)(i)(II), as Oct. 1, 1997, see section 107 of Pub. L. 104-330, set out as an Effective Date note under section 4101 of this title.

The United States Housing Act of 1937, referred to in pars. (12)(C)(i)(II) and (21)(A)(i), is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93-383, title II, §201(a), Aug. 22, 1974, 88 Stat. 653, which is classified generally to chapter 8 (§1437 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of Title 42 and Tables.

EFFECTIVE DATE

Section effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104-330, set out as a note under section 4101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 42 section 11905.

SUBCHAPTER I—BLOCK GRANTS AND GRANT REQUIREMENTS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 4192 of this title.

§ 4111. Block grants

(a) Authority

For each fiscal year, the Secretary shall (to the extent amounts are made available to carry out this chapter) make grants under this section on behalf of Indian tribes to carry out affordable housing activities. Under such a grant on behalf of an Indian tribe, the Secretary shall provide the grant amounts for the tribe directly to the recipient for the tribe.

(b) Plan requirement

(1) In general

The Secretary may make a grant under this chapter on behalf of an Indian tribe for a fiscal year only if—

(A) the Indian tribe has submitted to the Secretary an Indian housing plan for such fiscal year under section 4112 of this title; and

(B) the plan has been determined under section 4113 of this title to comply with the requirements of section 4112 of this title.

(2) Waiver

The Secretary may waive the applicability of the requirements under paragraph (1), in whole or in part, if the Secretary finds that an Indian tribe has not complied or cannot comply with such requirements due to circumstances beyond the control of the tribe.

(c) Local cooperation agreement

The Secretary may not make any grant under this chapter on behalf of an Indian tribe unless the governing body of the locality within which any affordable housing to be assisted with the

grant amounts will be situated has entered into an agreement with the recipient for the tribe providing for local cooperation required by the Secretary pursuant to this chapter.

(d) Exemption from taxation

A grant recipient for an Indian tribe may receive a block grant under this chapter only if—

(1) the affordable housing assisted with grant amounts received by the recipient (exclusive of any portions not assisted with amounts provided under this chapter) is exempt from all real and personal property taxes levied or imposed by any State, tribe, city, county, or other political subdivision; and

(2) the recipient makes annual payments of user fees to compensate such governments for the costs of providing governmental services, including police and fire protection, roads, water and sewerage systems, utilities systems and related facilities, or payments in lieu of taxes to such taxing authority, in an amount equal to the greater of \$150 per dwelling unit or 10 percent of the difference between the shelter rent and the utility cost, or such lesser amount as—

(A) is prescribed by State, tribal, or local law;

(B) is agreed to by the local governing body in the agreement under subsection (c) of this section; or

(C) the recipient and the local governing body agree that such user fees or payments in lieu of taxes shall not be made.

(e) Effect of failure to exempt from taxation

Notwithstanding subsection (d) of this section, a grant recipient that does not comply with the requirements under such subsection may receive a block grant under this chapter, but only if the tribe, State, city, county, or other political subdivision in which the affordable housing development is located contributes, in the form of cash or tax remission, the amount by which the taxes paid with respect to the development exceed the amounts prescribed in subsection (d)(2) of this section.

(f) Amount

Except as otherwise provided under this chapter, the amount of a grant under this section to a recipient for a fiscal year shall be—

(1) in the case of a recipient whose grant beneficiary is a single Indian tribe, the amount of the allocation under section 4151 of this title for the Indian tribe; and

(2) in the case of a recipient whose grant beneficiary is more than 1 Indian tribe, the sum of the amounts of the allocations under section 4151 of this title for each such Indian tribe.

(g) Use for affordable housing activities under plan

Except as provided in subsection (h) of this section, amounts provided under a grant under this section may be used only for affordable housing activities under subchapter II of this chapter that are consistent with an Indian housing plan approved under section 4113 of this title.

(h) Administrative expenses

The Secretary shall, by regulation, authorize each recipient to use a percentage of any grant

amounts received under this chapter for any reasonable administrative and planning expenses of the recipient relating to carrying out this chapter and activities assisted with such amounts, which may include costs for salaries of individuals engaged in administering and managing affordable housing activities assisted with grant amounts provided under this chapter and expenses of preparing an Indian housing plan under section 4112 of this title.

(i) Public-private partnerships

Each recipient shall make all reasonable efforts, consistent with the purposes of this chapter, to maximize participation by the private sector, including nonprofit organizations and for-profit entities, in implementing the approved Indian housing plan.

(Pub. L. 104-330, title I, §101, Oct. 26, 1996, 110 Stat. 4022.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act”, meaning Pub. L. 104-330, Oct. 26, 1996, 110 Stat. 4016, known as the Native American Housing Assistance and Self-Determination Act of 1996. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of this title and Tables.

EFFECTIVE DATE

Section effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104-330, set out as a note under section 4101 of this title.

§ 4112. Indian housing plans

(a) Plan submission

The Secretary shall provide—

(1) for an Indian tribe to submit to the Secretary, for each fiscal year, a housing plan under this section for the tribe;

(2) for the tribally designated housing entity for the tribe to submit the plan as provided in subsection (d) of this section for the tribe; and

(3) for the review of such plans.

(b) 5-year plan

Each housing plan under this section shall be in a form prescribed by the Secretary and shall contain, with respect to the 5-year period beginning with the fiscal year for which the plan is submitted, the following information:

(1) Mission statement

A general statement of the mission of the Indian tribe to serve the needs of the low-income families in the jurisdiction of the Indian tribe during the period.

(2) Goals and objectives

A statement of the goals and objectives of the Indian tribe to enable the tribe to serve the needs identified in paragraph (1) during the period.

(3) Activities plan

An overview of the activities planned during the period including an analysis of the manner in which the activities will enable the tribe to meet its mission, goals, and objectives.

(c) 1-year plan

A housing plan under this section for an Indian tribe shall be in a form prescribed by the

Secretary and contain the following information relating to the upcoming fiscal year for which the assistance under this chapter is to be made available:

(1) Goals and objectives

A statement of the goals and objectives to be accomplished during that period.

(2) Statement of needs

A statement of the housing needs of the low-income Indian families residing in the jurisdiction of the Indian tribe and the means by which such needs will be addressed during the period, including—

(A) a description of the estimated housing needs and the need for assistance for the low-income Indian families in the jurisdiction, including a description of the manner in which the geographical distribution of assistance is consistent with the geographical needs and needs for various categories of housing assistance; and

(B) a description of the estimated housing needs for all Indian families in the jurisdiction.

(3) Financial resources

An operating budget for the recipient, in a form prescribed by the Secretary, that includes—

(A) an identification and a description of the financial resources reasonably available to the recipient to carry out the purposes of this chapter, including an explanation of the manner in which amounts made available will leverage additional resources; and

(B) the uses to which such resources will be committed, including eligible and required affordable housing activities under subchapter II of this chapter and administrative expenses.

(4) Affordable housing resources

A statement of the affordable housing resources currently available and to be made available during the period, including—

(A) a description of the significant characteristics of the housing market in the jurisdiction, including the availability of housing from other public sources, private market housing, and the manner in which such characteristics influence the decision of the recipient to use grant amounts to be provided under this chapter for rental assistance, production of new units, acquisition of existing units, or rehabilitation of units;

(B) a description of the structure, coordination, and means of cooperation between the recipient and any other governmental entities in the development, submission, or implementation of housing plans, including a description of the involvement of private, public, and nonprofit organizations and institutions, and the use of loan guarantees under section 1715z-13a of title 12, and other housing assistance provided by the Federal Government for Indian tribes, including loans, grants, and mortgage insurance;

(C) a description of the manner in which the plan will address the needs identified pursuant to paragraph (2);

(D) a description of the manner in which the recipient will protect and maintain the viability of housing owned and operated by the recipient that was developed under a contract between the Secretary and an Indian housing authority pursuant to the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.];

(E) a description of any existing and anticipated homeownership programs and rental programs to be carried out during the period, and the requirements and assistance available under such programs;

(F) a description of any existing and anticipated housing rehabilitation programs necessary to ensure the long-term viability of the housing to be carried out during the period, and the requirements and assistance available under such programs;

(G) a description of all other existing or anticipated housing assistance provided by the recipient during the period, including transitional housing, homeless housing, college housing, supportive services housing, and the requirements and assistance available under such programs;

(H) a description of any housing to be demolished or disposed of, a timetable for such demolition or disposition, and any other information required by the Secretary with respect to such demolition or disposition;

(I) a description of the manner in which the recipient will coordinate with tribal and State welfare agencies to ensure that residents of such housing will be provided with access to resources to assist in obtaining employment and achieving self-sufficiency;

(J) a description of the requirements established by the recipient to promote the safety of residents of such housing, facilitate the undertaking of crime prevention measures, allow resident input and involvement, including the establishment of resident organizations, and allow for the coordination of crime prevention activities between the recipient and tribal and local law enforcement officials; and

(K) a description of the entity that will carry out the activities under the plan, including the organizational capacity and key personnel of the entity.

(5) Certification of compliance

Evidence of compliance which shall include, as appropriate—

(A) a certification that the recipient will comply with title II of the Civil Rights Act of 1968 [25 U.S.C. 1301 et seq.] in carrying out this chapter, to the extent that such title is applicable, and other applicable Federal statutes;

(B) a certification that the recipient will maintain adequate insurance coverage for housing units that are owned and operated or assisted with grant amounts provided under this chapter, in compliance with such requirements as may be established by the Secretary;

(C) a certification that policies are in effect and are available for review by the Secretary and the public governing the eligi-

bility, admission, and occupancy of families for housing assisted with grant amounts provided under this chapter;

(D) a certification that policies are in effect and are available for review by the Secretary and the public governing rents charged, including the methods by which such rents or homebuyer payments are determined, for housing assisted with grant amounts provided under this chapter; and

(E) a certification that policies are in effect and are available for review by the Secretary and the public governing the management and maintenance of housing assisted with grant amounts provided under this chapter.

(d) Participation of tribally designated housing entity

A plan under this section for an Indian tribe may be prepared and submitted on behalf of the tribe by the tribally designated housing entity for the tribe, but only if such plan contains a certification by the recognized tribal government of the grant beneficiary that such tribe—

(1) has had an opportunity to review the plan and has authorized the submission of the plan by the housing entity; or

(2) has delegated to such tribally designated housing entity the authority to submit a plan on behalf of the tribe without prior review by the tribe.

(e) Coordination of plans

A plan under this section may cover more than 1 Indian tribe, but only if the certification requirements under subsection (d) of this section are complied with by each such grant beneficiary covered.

(f) Plans for small tribes

(1) Separate requirements

The Secretary may—

(A) establish requirements for submission of plans under this section and the information to be included in such plans applicable to small Indian tribes and small tribally designated housing entities; and

(B) waive any requirements under this section that the Secretary determines are burdensome or unnecessary for such tribes and housing entities.

(2) Small tribes

The Secretary may define small Indian tribes and small tribally designated housing entities based on the number of dwelling units assisted under this subchapter by the tribe or housing entity or owned or operated pursuant to a contract under the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.] between the Secretary and the Indian housing authority for the tribe.

(g) Regulations

The requirements relating to the contents of plans under this section shall be established by regulation, pursuant to section 4116 of this title.

(Pub. L. 104-330, title I, § 102, Oct. 26, 1996, 110 Stat. 4023.)

REFERENCES IN TEXT

The United States Housing Act of 1937, referred to in subsecs. (c)(4)(D) and (f)(2), is act Sept. 1, 1937, ch. 896,

as revised generally by Pub. L. 93-383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 653, which is classified generally to chapter 8 (§1437 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of Title 42 and Tables.

The Civil Rights Act of 1968, referred to in subsec. (c)(5)(A), is Pub. L. 90-284, Apr. 11, 1968, 82 Stat. 73, as amended. Title II of the Act is classified generally to subchapter I (§1301 et seq.) of chapter 15 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3601 of Title 42 and Tables.

EFFECTIVE DATE

Section effective on the date provided by the Secretary of Housing and Urban Development pursuant to section 4116(a) of this title to provide for timely submission and review of Indian housing plans as necessary for the provision of assistance under this chapter in fiscal year 1998, see section 4113(e) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4103, 4111, 4113 of this title; title 12 section 1715z-13a.

§ 4113. Review of plans

(a) Review and notice

(1) Review

The Secretary shall conduct a limited review of each Indian housing plan submitted to the Secretary to ensure that the plan complies with the requirements of section 4112 of this title. The Secretary shall have the discretion to review a plan only to the extent that the Secretary considers review is necessary.

(2) Notice

The Secretary shall notify each Indian tribe for which a plan is submitted and any tribally designated housing entity for the tribe whether the plan complies with such requirements not later than 60 days after receiving the plan. If the Secretary does not notify the Indian tribe, as required under this subsection and subsection (b) of this section, the plan shall be considered, for purposes of this chapter, to have been determined to comply with the requirements under section 4112 of this title and the tribe shall be considered to have been notified of compliance upon the expiration of such 60-day period.

(b) Notice of reasons for determination of non-compliance

If the Secretary determines that a plan, as submitted, does not comply with the requirements under section 4112 of this title, the Secretary shall specify in the notice under subsection (a) of this section the reasons for the noncompliance and any modifications necessary for the plan to meet the requirements under section 4112 of this title.

(c) Review

After submission of the Indian housing plan or any amendment or modification to the plan to the Secretary, to the extent that the Secretary considers such action to be necessary to make determinations under this subsection, the Secretary shall review the plan (including any amendments or modifications thereto) to determine whether the contents of the plan—

(1) set forth the information required by section 4112 of this title to be contained in an Indian housing plan;

(2) are consistent with information and data available to the Secretary; and

(3) are prohibited by or inconsistent with any provision of this chapter or other applicable law.

If the Secretary determines that any of the appropriate certifications required under section 4112(c)(5) of this title are not included in the plan, the plan shall be deemed to be incomplete.

(d) Updates to plan

After a plan under section 4112 of this title has been submitted for an Indian tribe for any fiscal year, the tribe may comply with the provisions of such section for any succeeding fiscal year (with respect to information included for the 5-year period under section 4112(b) of this title or the 1-year period under section 4112(c) of this title) by submitting only such information regarding such changes as may be necessary to update the plan previously submitted. Not less than once every 5 years, the tribe shall submit a complete plan.

(e) Effective date

This section and section 4112 of this title shall take effect on the date provided by the Secretary pursuant to section 4116(a) of this title to provide for timely submission and review of Indian housing plans as necessary for the provision of assistance under this chapter in fiscal year 1998.

(Pub. L. 104-330, title I, § 103, Oct. 26, 1996, 110 Stat. 4026.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4111 of this title; title 12 section 1715z-13a.

§ 4114. Treatment of program income and labor standards

(a) Program income

(1) Authority to retain

A recipient may retain any program income that is realized from any grant amounts under this chapter if—

(A) such income was realized after the initial disbursement of the grant amounts received by the recipient; and

(B) the recipient has agreed that it will utilize the program income for affordable housing activities in accordance with the provisions of this chapter.

(2) Prohibition of reduction of grant

The Secretary may not reduce the grant amount for any Indian tribe based solely on—

(A) whether the recipient for the tribe retains program income under paragraph (1);

(B) the amount of any such program income retained; or

(C) whether the recipient retains reserve amounts described in section 4140 of this title.

(3) Exclusion of amounts

The Secretary may, by regulation, exclude from consideration as program income any

amounts determined to be so small that compliance with the requirements of this subsection would create an unreasonable administrative burden on the recipient.

(b) Labor standards

(1) In general

Any contract or agreement for assistance, sale, or lease pursuant to this chapter shall contain a provision requiring that not less than the wages prevailing in the locality, as determined or adopted (subsequent to a determination under applicable State, tribal, or local law) by the Secretary, shall be paid to all architects, technical engineers, draftsmen, and technicians employed in the development, and all maintenance laborers and mechanics employed in the operation, of the affordable housing project involved; and shall also contain a provision that not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a-276a-5), shall be paid to all laborers and mechanics employed in the development of the affordable housing involved, and the Secretary shall require certification as to compliance with the provisions of this paragraph before making any payment under such contract or agreement.

(2) Exceptions

Paragraph (1) and the provisions relating to wages (pursuant to paragraph (1)) in any contract or agreement for assistance, sale, or lease pursuant to this chapter, shall not apply to any individual who receives no compensation or is paid expenses, reasonable benefits, or a nominal fee to perform the services for which the individual volunteered and who is not otherwise employed at any time in the construction work.

(Pub. L. 104-330, title I, § 104, Oct. 26, 1996, 110 Stat. 4027.)

REFERENCES IN TEXT

The Davis-Bacon Act, referred to in subsec. (b)(1), is act Mar. 3, 1931, ch. 411, 46 Stat. 1494, as amended, which is classified generally to sections 276a to 276a-5 of Title 40, Public Buildings, Property, and Works. For complete classification of this Act to the Code, see Short Title note set out under section 276a of Title 40 and Tables.

EFFECTIVE DATE

Section effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104-330, set out as a note under section 4101 of this title.

§ 4115. Environmental review

(a) In general

(1) Release of funds

In order to ensure that the policies of the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.] and other provisions of law that further the purposes of such Act (as specified in regulations issued by the Secretary) are most effectively implemented in connection with the expenditure of grant amounts provided under this chapter, and to ensure to the public undiminished protection of the environment, the Secretary, in lieu of the envi-

ronmental protection procedures otherwise applicable, may by regulation provide for the release of amounts for particular projects to tribes which assume all of the responsibilities for environmental review, decisionmaking, and action pursuant to such Act, and such other provisions of law as the regulations of the Secretary specify, that would apply to the Secretary were the Secretary to undertake such projects as Federal projects.

(2) Regulations

(A) In general

The Secretary shall issue regulations to carry out this section only after consultation with the Council on Environmental Quality.

(B) Contents

The regulations issued under this paragraph shall—

- (i) provide for the monitoring of the environmental reviews performed under this section;
- (ii) in the discretion of the Secretary, facilitate training for the performance of such reviews; and
- (iii) provide for the suspension or termination of the assumption of responsibilities under this section.

(3) Effect on assumed responsibility

The duty of the Secretary under paragraph (2)(B) shall not be construed to limit or reduce any responsibility assumed by a recipient of grant amounts with respect to any particular release of funds.

(b) Procedure

The Secretary shall approve the release of funds subject to the procedures authorized by this section only if, not less than 15 days prior to such approval and prior to any commitment of funds to such projects, the tribe has submitted to the Secretary a request for such release accompanied by a certification that meets the requirements of subsection (c) of this section. The approval of the Secretary of any such certification shall be deemed to satisfy the responsibilities of the Secretary under the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.] and such other provisions of law as the regulations of the Secretary specify insofar as those responsibilities relate to the releases of funds for projects to be carried out pursuant thereto that are covered by such certification.

(c) Certification

A certification under the procedures authorized by this section shall—

- (1) be in a form acceptable to the Secretary;
- (2) be executed by the chief executive officer or other officer of the tribe under this chapter qualified under regulations of the Secretary;
- (3) specify that the tribe has fully carried out its responsibilities as described under subsection (a) of this section; and
- (4) specify that the certifying officer—

(A) consents to assume the status of a responsible Federal official under the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.] and each provision of law speci-

fied in regulations issued by the Secretary insofar as the provisions of such Act or such other provisions of law apply pursuant to subsection (a) of this section; and

(B) is authorized and consents on behalf of the tribe and such officer to accept the jurisdiction of the Federal courts for the purpose of enforcement of the responsibilities of the certifying officer as such an official.

(Pub. L. 104-330, title I, §105, Oct. 26, 1996, 110 Stat. 4028.)

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in text, is Pub. L. 91-190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

EFFECTIVE DATE

Section effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104-330, set out as a note under section 4101 of this title.

§ 4116. Regulations

(a) Transition requirements

(1) In general

Not later than 90 days after October 26, 1996, the Secretary shall, by notice issued in the Federal Register, establish any requirements necessary to provide for the transition (upon the effectiveness of this chapter and the amendments made by this chapter) from the provision of assistance for Indian tribes and Indian housing authorities under the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.] and other related provisions of law to the provision of assistance in accordance with this chapter and the amendments made by this chapter.

(2) Public comments; general notice of proposed rulemaking

The notice issued under paragraph (1) shall—

- (A) invite public comments regarding such transition requirements and final regulations to carry out this chapter; and
- (B) include a general notice of proposed rulemaking (for purposes of section 564(a) of title 5) of the final regulations under subsection (b) of this section.

(b) Final regulations

(1) Timing

The Secretary shall issue final regulations necessary to carry out this chapter not later than September 1, 1997, and such regulations shall take effect not later than the effective date of this chapter.

(2) Negotiated rulemaking procedure

(A) In general

Notwithstanding sections 563(a) and 565(a) of title 5, all regulations required under this chapter shall be issued according to a negotiated rulemaking procedure under subchapter III of chapter 5 of title 5.

(B) Committee

(i) In general

The Secretary shall establish a negotiated rulemaking committee, in accord-

ance with the procedures under that subchapter, for the development of proposed regulations under subparagraph (A).

(ii) Adaptation

In establishing the negotiated rule-making committee, the Secretary shall—

(I) adapt the procedures under the subchapter described in clause (i) to the unique government-to-government relationship between the Indian tribes and the United States, and shall ensure that the membership of the committee include only representatives of the Federal Government and of geographically diverse small, medium, and large Indian tribes; and

(II) shall not preclude the participation of tribally designated housing entities should tribes elect to be represented by such entities.

(c) Effective date

This section shall take effect on October 26, 1996.

(Pub. L. 104-330, title I, §106, Oct. 26, 1996, 110 Stat. 4029.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (b), was in the original “this Act”, meaning Pub. L. 104-330, Oct. 26, 1996, 110 Stat. 4016, known as the Native American Housing Assistance and Self-Determination Act of 1996. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of this title and Tables.

For the effective date of this chapter, referred to in subsecs. (a)(1) and (b)(1), as Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104-330, set out as an Effective Date note under section 4101 of this title.

The United States Housing Act of 1937, referred to in subsec. (a)(1), is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93-383, title II, §201(a), Aug. 22, 1974, 88 Stat. 653, which is classified generally to chapter 8 (§1437 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of Title 42 and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4112, 4113, 4152 of this title.

§ 4117. Authorization of appropriations

There are authorized to be appropriated for grants under this subchapter such sums as may be necessary for each of fiscal years 1998, 1999, 2000, and 2001. This section shall take effect on October 26, 1996.

(Pub. L. 104-330, title I, §108, Oct. 26, 1996, 110 Stat. 4030.)

SUBCHAPTER II—AFFORDABLE HOUSING ACTIVITIES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 4103, 4111, 4112 of this title.

§ 4131. National objectives and eligible families

(a) Primary objective

The national objectives of this chapter are—

(1) to assist and promote affordable housing activities to develop, maintain, and operate affordable housing in safe and healthy environments on Indian reservations and in other Indian areas for occupancy by low-income Indian families;

(2) to ensure better access to private mortgage markets for Indian tribes and their members and to promote self-sufficiency of Indian tribes and their members;

(3) to coordinate activities to provide housing for Indian tribes and their members with Federal, State, and local activities to further economic and community development for Indian tribes and their members;

(4) to plan for and integrate infrastructure resources for Indian tribes with housing development for tribes; and

(5) to promote the development of private capital markets in Indian country and to allow such markets to operate and grow, thereby benefiting Indian communities.

(b) Eligible families

(1) In general

Except as provided under paragraph (2), assistance under eligible housing activities under this chapter shall be limited to low-income Indian families on Indian reservations and other Indian areas.

(2) Exception to low-income requirement

A recipient may provide assistance for homeownership activities under section 4132(2) of this title, model activities under section 4132(6) of this title, or loan guarantee activities under subchapter VI of this chapter to Indian families who are not low-income families, to the extent that the Secretary approves the activities pursuant to such section or subchapter because there is a need for housing for such families that cannot reasonably be met without such assistance. The Secretary shall establish limits on the amount of assistance that may be provided under this chapter for activities for families who are not low-income families.

(3) Non-Indian families

Notwithstanding paragraph (1), a recipient may provide housing or housing assistance provided through affordable housing activities assisted with grant amounts under this chapter for a non-Indian family on an Indian reservation or other Indian area if the recipient determines that the presence of the family on the Indian reservation or other Indian area is essential to the well-being of Indian families and the need for housing for the family cannot reasonably be met without such assistance.

(4) Preference for tribal members and other Indian families

The Indian housing plan for an Indian tribe may require preference, for housing or housing assistance provided through affordable housing activities assisted with grant amounts provided under this chapter on behalf of such tribe, to be given (to the extent practicable) to Indian families who are members of such tribe, or to other Indian families. In any case in which the applicable Indian housing plan for

an Indian tribe provides for preference under this paragraph, the recipient for the tribe shall ensure that housing activities that are assisted with grant amounts under this chapter for such tribe are subject to such preference.

(5) Exemption

Title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.] and title VIII of the Civil Rights Act of 1968 [42 U.S.C. 3601 et seq.] shall not apply to actions by Indian tribes under this subsection.

(Pub. L. 104-330, title II, §201, Oct. 26, 1996, 110 Stat. 4031.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act”, meaning Pub. L. 104-330, Oct. 26, 1996, 110 Stat. 4016, known as the Native American Housing Assistance and Self-Determination Act of 1996. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of this title and Tables.

The Civil Rights Act of 1964, referred to in subsec. (b)(5), is Pub. L. 88-352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Act is classified generally to subchapter V (§2000d et seq.) of chapter 21 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of Title 42 and Tables.

The Civil Rights Act of 1968, referred to in subsec. (b)(5), is Pub. L. 90-284, Apr. 11, 1968, 82 Stat. 73, as amended. Title VIII of the Act, known as the Fair Housing Act, is classified principally to subchapter I (§3601 et seq.) of chapter 45 of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 3601 of Title 42 and Tables.

EFFECTIVE DATE

Section effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104-330, set out as a note under section 4101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4135 of this title.

§ 4132. Eligible affordable housing activities

Affordable housing activities under this subchapter are activities, in accordance with the requirements of this subchapter, to develop or to support affordable housing for rental or homeownership, or to provide housing services with respect to affordable housing, through the following activities:

(1) Indian housing assistance

The provision of modernization or operating assistance for housing previously developed or operated pursuant to a contract between the Secretary and an Indian housing authority.

(2) Development

The acquisition, new construction, reconstruction, or moderate or substantial rehabilitation of affordable housing, which may include real property acquisition, site improvement, development of utilities and utility services, conversion, demolition, financing, administration and planning, and other related activities.

(3) Housing services

The provision of housing-related services for affordable housing, such as housing counseling

in connection with rental or homeownership assistance, establishment and support of resident organizations and resident management corporations, energy auditing, activities related to the provision of self-sufficiency and other services, and other services related to assisting owners, tenants, contractors, and other entities, participating or seeking to participate in other housing activities assisted pursuant to this section.

(4) Housing management services

The provision of management services for affordable housing, including preparation of work specifications, loan processing, inspections, tenant selection, management of tenant-based rental assistance, and management of affordable housing projects.

(5) Crime prevention and safety activities

The provision of safety, security, and law enforcement measures and activities appropriate to protect residents of affordable housing from crime.

(6) Model activities

Housing activities under model programs that are designed to carry out the purposes of this chapter and are specifically approved by the Secretary as appropriate for such purpose.

(Pub. L. 104-330, title II, §202, Oct. 26, 1996, 110 Stat. 4032.)

EFFECTIVE DATE

Section effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104-330, set out as a note under section 4101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4131, 4133, 4191 of this title.

§ 4133. Program requirements

(a) Rents

(1) Establishment

Subject to paragraph (2), each recipient shall develop written policies governing rents and homebuyer payments charged for dwelling units assisted under this chapter, including the methods by which such rents and homebuyer payments are determined.

(2) Maximum rent

In the case of any low-income family residing in a dwelling unit assisted with grant amounts under this chapter, the monthly rent or homebuyer payment (as applicable) for such dwelling unit may not exceed 30 percent of the monthly adjusted income of such family.

(b) Maintenance and efficient operation

Each recipient who owns or operates (or is responsible for funding any entity that owns or operates) housing developed or operated pursuant to a contract between the Secretary and an Indian housing authority pursuant to the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.] shall, using amounts of any grants received under this chapter, reserve and use for operating assistance under section 4132(1) of this title such amounts as may be necessary to provide for the continued maintenance and efficient operation

of such housing. This subsection may not be construed to prevent any recipient (or entity funded by a recipient) from demolishing or disposing of Indian housing referred to in this subsection, pursuant to regulations established by the Secretary.

(c) Insurance coverage

Each recipient shall maintain adequate insurance coverage for housing units that are owned or operated or assisted with grant amounts provided under this chapter.

(d) Eligibility for admission

Each recipient shall develop written policies governing the eligibility, admission, and occupancy of families for housing assisted with grant amounts provided under this chapter.

(e) Management and maintenance

Each recipient shall develop policies governing the management and maintenance of housing assisted with grant amounts under this chapter.

(Pub. L. 104-330, title II, §203, Oct. 26, 1996, 110 Stat. 4032.)

REFERENCES IN TEXT

The United States Housing Act of 1937, referred to in subsec. (b), is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93-383, title II, §201(a), Aug. 22, 1974, 88 Stat. 653, which is classified generally to chapter 8 (§1437 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of Title 42 and Tables.

EFFECTIVE DATE

Section effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104-330, set out as a note under section 4101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4134, 4192 of this title.

§ 4134. Types of investments

(a) In general

Subject to section 4133 of this title and the Indian housing plan for an Indian tribe, the recipient for that tribe shall have—

- (1) the discretion to use grant amounts for affordable housing activities through equity investments, interest-bearing loans or advances, noninterest-bearing loans or advances, interest subsidies, leveraging of private investments, or any other form of assistance that the Secretary has determined to be consistent with the purposes of this chapter; and
- (2) the right to establish the terms of assistance.

(b) Investments

A recipient may invest grant amounts for the purposes of carrying out affordable housing activities in investment securities and other obligations as approved by the Secretary.

(Pub. L. 104-330, title II, §204, Oct. 26, 1996, 110 Stat. 4033.)

EFFECTIVE DATE

Section effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104-330, set out as a note under section 4101 of this title.

§ 4135. Low-income requirement and income targeting

(a) In general

Housing shall qualify as affordable housing for purposes of this chapter only if—

- (1) each dwelling unit in the housing—

(A) in the case of rental housing, is made available for occupancy only by a family that is a low-income family at the time of their initial occupancy of such unit; and

(B) in the case of housing for homeownership, is made available for purchase only by a family that is a low-income family at the time of purchase; and

- (2) except for housing assisted under section 1437bb of title 42 (as in effect before the date of the effectiveness of this chapter), each dwelling unit in the housing will remain affordable, according to binding commitments satisfactory to the Secretary, for the remaining useful life of the property (as determined by the Secretary) without regard to the term of the mortgage or to transfer of ownership, or for such other period that the Secretary determines is the longest feasible period of time consistent with sound economics and the purposes of this chapter, except upon a foreclosure by a lender (or upon other transfer in lieu of foreclosure) if such action—

(A) recognizes any contractual or legal rights of public agencies, nonprofit sponsors, or others to take actions that would avoid termination of low-income affordability in the case of foreclosure or transfer in lieu of foreclosure; and

(B) is not for the purpose of avoiding low-income affordability restrictions, as determined by the Secretary.

(b) Exception

Notwithstanding subsection (a) of this section, housing assisted pursuant to section 4131(b)(2) of this title shall be considered affordable housing for purposes of this chapter.

(Pub. L. 104-330, title II, §205, Oct. 26, 1996, 110 Stat. 4033.)

REFERENCES IN TEXT

Section 1437bb of title 42, referred to in subsec. (a)(2), was repealed by Pub. L. 104-330, title V, §501(a), Oct. 26, 1996, 110 Stat. 4041, effective Oct. 1, 1997.

For the date of the effectiveness of this chapter, referred to in subsec. (a)(2), as Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104-330, set out as an Effective Date note under section 4101 of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104-330, set out as a note under section 4101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4139 of this title.

§ 4136. Certification of compliance with subsidy layering requirements

With respect to housing assisted with grant amounts provided under this chapter, the requirements of section 3545(d) of title 42 shall be considered to be satisfied upon certification by

the Secretary that the combination of Federal assistance provided to any housing project is not any more than is necessary to provide affordable housing.

(Pub. L. 104-330, title II, §206, Oct. 26, 1996, 110 Stat. 4034.)

EFFECTIVE DATE

Section effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104-330, set out as a note under section 4101 of this title.

§ 4137. Lease requirements and tenant selection

(a) Leases

Except to the extent otherwise provided by or inconsistent with tribal law, in renting dwelling units in affordable housing assisted with grant amounts provided under this chapter, the owner or manager of the housing shall utilize leases that—

(1) do not contain unreasonable terms and conditions;

(2) require the owner or manager to maintain the housing in compliance with applicable housing codes and quality standards;

(3) require the owner or manager to give adequate written notice of termination of the lease, which shall be the period of time required under State, tribal, or local law;

(4) specify that, with respect to any notice of eviction or termination, notwithstanding any State, tribal, or local law, a resident shall be informed of the opportunity, prior to any hearing or trial, to examine any relevant documents, records, or regulations directly related to the eviction or termination;

(5) require that the owner or manager may not terminate the tenancy, during the term of the lease, except for serious or repeated violation of the terms or conditions of the lease, violation of applicable Federal, State, tribal, or local law, or for other good cause; and

(6) provide that the owner or manager may terminate the tenancy of a resident for any activity, engaged in by the resident, any member of the household of the resident, or any guest or other person under the control of the resident, that—

(A) threatens the health or safety of, or right to peaceful enjoyment of the premises by, other residents or employees of the owner or manager of the housing;

(B) threatens the health or safety of, or right to peaceful enjoyment of their premises by, persons residing in the immediate vicinity of the premises; or

(C) is criminal activity (including drug-related criminal activity) on or off the premises.

(b) Tenant selection

The owner or manager of affordable rental housing assisted with grant amounts provided under this chapter shall adopt and utilize written tenant selection policies and criteria that—

(1) are consistent with the purpose of providing housing for low-income families;

(2) are reasonably related to program eligibility and the ability of the applicant to perform the obligations of the lease; and

(3) provide for—

(A) the selection of tenants from a written waiting list in accordance with the policies and goals set forth in the Indian housing plan for the tribe that is the grant beneficiary of such grant amounts; and

(B) the prompt notification in writing of any rejected applicant of the grounds for any rejection.

(Pub. L. 104-330, title II, §207, Oct. 26, 1996, 110 Stat. 4034.)

EFFECTIVE DATE

Section effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104-330, set out as a note under section 4101 of this title.

§ 4138. Availability of records

(a) Provision of information

Notwithstanding any other provision of law, except as provided in paragraph (2), the National Crime Information Center, police departments, and other law enforcement agencies shall, upon request, provide information to Indian tribes or tribally designated housing entities regarding the criminal conviction records of adult applicants for, or tenants of, housing assisted with grant amounts provided to such tribe or entity under this chapter for purposes of applicant screening, lease enforcement, and eviction.

(b) Exception

A law enforcement agency described in paragraph (1) shall provide information under this paragraph relating to any criminal conviction of a juvenile only to the extent that the release of such information is authorized under the law of the applicable State, tribe, or locality.

(c) Confidentiality

An Indian tribe or tribally designated housing entity receiving information under this section may use such information only for the purposes provided in this section and such information may not be disclosed to any person who is not an officer, employee, or authorized representative of the tribe or entity or the owner of housing assisted under this chapter, and who has a job-related need to have access to the information for the purposes under this section. For judicial eviction proceedings, disclosures may be made to the extent necessary. The Secretary shall, by regulation, establish procedures necessary to ensure that information provided under this section to any tribe or entity is used, and confidentiality is maintained, as required under this section.

(Pub. L. 104-330, title II, §208, Oct. 26, 1996, 110 Stat. 4035.)

EFFECTIVE DATE

Section effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104-330, set out as a note under section 4101 of this title.

§ 4139. Repayment

If a recipient uses grant amounts to provide affordable housing under activities under this subchapter and, at any time during the useful life of the housing the housing does not comply with the requirement under section 4135(a)(2)¹ of

¹ See References in Text note below.

this title, the Secretary shall reduce future grant payments on behalf of the grant beneficiary by an amount equal to the grant amounts used for such housing (under the authority under section 4161(a)(2) of this title) or require repayment to the Secretary of an amount equal to such grant amounts.

(Pub. L. 104-330, title II, §209, Oct. 26, 1996, 110 Stat. 4035.)

REFERENCES IN TEXT

Section 4135(a)(2) of this title, referred to in text, was in the original “section 205(2)”, meaning section 205(2) of Pub. L. 104-330, and was translated as reading section 205(a)(2) of Pub. L. 104-330, to reflect the probable intent of Congress.

EFFECTIVE DATE

Section effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104-330, set out as a note under section 4101 of this title.

§ 4140. Continued use of amounts for affordable housing

Any funds for programs for low-income housing under the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.] that, on the date of the applicability of this chapter to an Indian tribe, are owned by, or in the possession or under the control of, the Indian housing authority for the tribe, including all reserves not otherwise obligated, shall be considered assistance under this chapter and subject to the provisions of this chapter relating to use of such assistance.

(Pub. L. 104-330, title II, §210, Oct. 26, 1996, 110 Stat. 4036.)

REFERENCES IN TEXT

The United States Housing Act of 1937, referred to in text, is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93-383, title II, §201(a), Aug. 22, 1974, 88 Stat. 653, which is classified generally to chapter 8 (§1437 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of Title 42 and Tables.

The date of the applicability of this chapter, referred to in text, probably means the effective date of Pub. L. 104-330, which is Oct. 1, 1997, except as otherwise expressly provided. See section 107 of Pub. L. 104-330, set out as an Effective Date note under section 4101 of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104-330, set out as a note under section 4101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4114 of this title.

SUBCHAPTER III—ALLOCATION OF GRANT AMOUNTS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 4191 of this title.

§ 4151. Annual allocation

For each fiscal year, the Secretary shall allocate any amounts made available for assistance under this chapter for the fiscal year, in accordance with the formula established pursuant to

section 4152 of this title, among Indian tribes that comply with the requirements under this chapter for a grant under this chapter.

(Pub. L. 104-330, title III, §301, Oct. 26, 1996, 110 Stat. 4036.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act”, meaning Pub. L. 104-330, Oct. 26, 1996, 110 Stat. 4016, known as the Native American Housing Assistance and Self-Determination Act of 1996. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of this title and Tables.

EFFECTIVE DATE

Section effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104-330, set out as a note under section 4101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4111 of this title.

§ 4152. Allocation formula

(a) Establishment

The Secretary shall, by regulations issued not later than the expiration of the 12-month period beginning on October 26, 1996, in the manner provided under section 4116 of this title, establish a formula to provide for allocating amounts available for a fiscal year for block grants under this chapter among Indian tribes in accordance with the requirements of this section.

(b) Factors for determination of need

The formula shall be based on factors that reflect the need of the Indian tribes and the Indian areas of the tribes for assistance for affordable housing activities, including the following factors:

(1) The number of low-income housing dwelling units owned or operated at the time pursuant to a contract between an Indian housing authority for the tribe and the Secretary.

(2) The extent of poverty and economic distress and the number of Indian families within Indian areas of the tribe.

(3) Other objectively measurable conditions as the Secretary and the Indian tribes may specify.

(c) Other factors for consideration

In establishing the formula, the Secretary shall consider—

(1) the relative administrative capacities and other challenges faced by the recipient, including, but not limited to geographic distribution within the Indian area and technical capacity; and

(2) the extent to which terminations of assistance under subchapter V of this chapter will affect funding available to State recognized tribes.

(d) Funding for public housing operation and modernization

(1) Full funding

The formula shall provide that, if, in any fiscal year, the total amount made available for assistance under this chapter is equal to or greater than the total amount made available for fiscal year 1996 for assistance for the oper-

ation and modernization of public housing developed or operated pursuant to a contract between the Secretary and an Indian housing authority pursuant to the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.], the amount provided for such fiscal year for each Indian tribe for which such operating or modernization assistance was provided for fiscal year 1996 shall not be less than the total amount of such operating and modernization assistance provided for fiscal year 1996 for such tribe.

(2) Partial funding

The formula shall provide that, if, in any fiscal year, the total amount made available for assistance under this chapter is less than the total amount made available for fiscal year 1996 for assistance for the operation and modernization of public housing developed or operated pursuant to a contract between the Secretary and an Indian housing authority pursuant to the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.], the amount provided for such fiscal year for each Indian tribe for which such operating or modernization assistance was provided for fiscal year 1996 shall not be less than the amount that bears the same ratio to the total amount available for assistance under this chapter for such fiscal year that the amount of operating and modernization assistance provided for the tribe for fiscal year 1996 bears to the total amount made available for fiscal year 1996 for assistance for the operation and modernization of such public housing.

(e) Effective date

This section shall take effect on October 26, 1996.

(Pub. L. 104-330, title III, §302, Oct. 26, 1996, 110 Stat. 4036.)

REFERENCES IN TEXT

Subchapter V of this chapter, referred to in subsec. (c)(2), was in the original "title V", meaning title V of Pub. L. 104-330, which enacted subchapter V of this chapter and section 12899h-1 of Title 42, The Public Health and Welfare, amended sections 1437a, 1437c to 1437e, 1437g, 1437i, 1437n, 1437u to 1437x, 1437aaa-5, 1437aaa-6, 1439, 11371 to 11376, 11382, 11401, 11403g, 11408, 11903a, 12747, and 12838 of Title 42, repealed sections 1437aa to 1437ee of Title 42, enacted provisions set out as notes under sections 11371, 12747, and 12899h-1 of Title 42, amended provisions set out as a note under section 11301 of Title 42, and repealed provisions set out as a note under section 1701z-6 of Title 12, Banks and Banking. For complete classification of title V to the Code, see Tables.

The United States Housing Act of 1937, referred to in subsec. (d), is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93-383, title II, §201(a), Aug. 22, 1974, 88 Stat. 653, which is classified generally to chapter 8 (§1437 et seq.) of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of Title 42 and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4103, 4151 of this title.

SUBCHAPTER IV—COMPLIANCE, AUDITS, AND REPORTS

§ 4161. Remedies for noncompliance

(a) Actions by Secretary affecting grant amounts

Except as provided in subsection (b) of this section, if the Secretary finds after reasonable notice and opportunity for hearing that a recipient of assistance under this chapter has failed to comply substantially with any provision of this chapter, the Secretary shall—

(1) terminate payments under this chapter to the recipient;

(2) reduce payments under this chapter to the recipient by an amount equal to the amount of such payments that were not expended in accordance with this chapter;

(3) limit the availability of payments under this chapter to programs, projects, or activities not affected by such failure to comply; or

(4) in the case of noncompliance described in section 4162(b) of this title, provide a replacement tribally designated housing entity for the recipient, under section 4162 of this title.

If the Secretary takes an action under paragraph (1), (2), or (3), the Secretary shall continue such action until the Secretary determines that the failure to comply has ceased.

(b) Noncompliance because of technical incapacity

If the Secretary makes a finding under subsection (a) of this section, but determines that the failure to comply substantially with the provisions of this chapter—

(1) is not a pattern or practice of activities constituting willful noncompliance, and

(2) is a result of the limited capability or capacity of the recipient,

the Secretary may provide technical assistance for the recipient (directly or indirectly) that is designed to increase the capability and capacity of the recipient to administer assistance provided under this chapter in compliance with the requirements under this chapter.

(c) Referral for civil action

(1) Authority

In lieu of, or in addition to, any action authorized by subsection (a) of this section, if the Secretary has reason to believe that a recipient has failed to comply substantially with any provision of this chapter, the Secretary may refer the matter to the Attorney General of the United States with a recommendation that an appropriate civil action be instituted.

(2) Civil action

Upon such a referral, the Attorney General may bring a civil action in any United States district court having venue thereof for such relief as may be appropriate, including an action to recover the amount of the assistance furnished under this chapter that was not expended in accordance with it, or for mandatory or injunctive relief.

(d) Review

(1) In general

Any recipient who receives notice under subsection (a) of this section of the termination,

reduction, or limitation of payments under this chapter—

(A) may, not later than 60 days after receiving such notice, file with the United States Court of Appeals for the circuit in which such State is located, or in the United States Court of Appeals for the District of Columbia, a petition for review of the action of the Secretary; and

(B) upon the filing of any petition under subparagraph (A), shall forthwith transmit copies of the petition to the Secretary and the Attorney General of the United States, who shall represent the Secretary in the litigation.

(2) Procedure

The Secretary shall file in the court a record of the proceeding on which the Secretary based the action, as provided in section 2112 of title 28. No objection to the action of the Secretary shall be considered by the court unless such objection has been urged before the Secretary.

(3) Disposition

(A) Court proceedings

The court shall have jurisdiction to affirm or modify the action of the Secretary or to set it aside in whole or in part. The findings of fact by the Secretary, if supported by substantial evidence on the record considered as a whole, shall be conclusive. The court may order additional evidence to be taken by the Secretary, and to be made part of the record.

(B) Secretary

The Secretary—

(i) may modify the findings of fact of the Secretary, or make new findings, by reason of the new evidence so taken and filed with the court; and

(ii) shall file—

(I) such modified or new findings, which findings with respect to questions of fact shall be conclusive if supported by substantial evidence on the record considered as a whole; and

(II) the recommendation of the Secretary, if any, for the modification or setting aside of the original action of the Secretary.

(4) Finality

Upon the filing of the record with the court, the jurisdiction of the court shall be exclusive and its judgment shall be final, except that such judgment shall be subject to review by the Supreme Court of the United States upon writ of certiorari or certification as provided in section 1254 of title 28.

(Pub. L. 104-330, title IV, § 401, Oct. 26, 1996, 110 Stat. 4037.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act”, meaning Pub. L. 104-330, Oct. 26, 1996, 110 Stat. 4016, known as the Native American Housing Assistance and Self-Determination Act of 1996. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of this title and Tables.

EFFECTIVE DATE

Section effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104-330, set out as a note under section 4101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4139 of this title.

§ 4162. Replacement of recipient

(a) Authority

As a condition of the Secretary making a grant under this chapter on behalf of an Indian tribe, the tribe shall agree that, notwithstanding any other provision of law, the Secretary may, only in the circumstances set forth in subsection (b) of this section, require that a replacement tribally designated housing entity serve as the recipient for the tribe, in accordance with subsection (c) of this section.

(b) Conditions of removal

The Secretary may require such replacement tribally designated housing entity for a tribe only upon a determination by the Secretary on the record after opportunity for a hearing that the recipient for the tribe has engaged in a pattern or practice of activities that constitutes substantial or willful noncompliance with the requirements under this chapter.

(c) Choice and term of replacement

If the Secretary requires that a replacement tribally designated housing entity serve as the recipient for a tribe (or tribes)—

(1) the replacement entity shall be an entity mutually agreed upon by the Secretary and the tribe (or tribes) for which the recipient was authorized to act, except that if no such entity is agreed upon before the expiration of the 60-day period beginning upon the date that the Secretary makes the determination under subsection (b) of this section, the Secretary shall act as the replacement entity until agreement is reached upon a replacement entity; and

(2) the replacement entity (or the Secretary, as provided in paragraph (1)) shall act as the tribally designated housing entity for the tribe (or tribes) for a period that expires upon—

(A) a date certain, which shall be specified by the Secretary upon making the determination under subsection (b) of this section; or

(B) the occurrence of specific conditions, which conditions shall be specified in written notice provided by the Secretary to the tribe upon making the determination under subsection (b) of this section.

(Pub. L. 104-330, title IV, § 402, Oct. 26, 1996, 110 Stat. 4039.)

EFFECTIVE DATE

Section effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104-330, set out as a note under section 4101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4161 of this title.

§ 4163. Monitoring of compliance**(a) Enforceable agreements**

Each recipient, through binding contractual agreements with owners and otherwise, shall ensure long-term compliance with the provisions of this chapter. Such measures shall provide for (1) enforcement of the provisions of this chapter by the grant beneficiary or by recipients and other intended beneficiaries, and (2) remedies for the breach of such provisions.

(b) Periodic monitoring

Not less frequently than annually, each recipient shall review the activities conducted and housing assisted under this chapter to assess compliance with the requirements of this chapter. Such review shall include onsite inspection of housing to determine compliance with applicable requirements. The results of each review shall be included in the performance report of the recipient submitted to the Secretary under section 4164 of this title and made available to the public.

(c) Performance measures

The Secretary shall establish such performance measures as may be necessary to assess compliance with the requirements of this chapter.

(Pub. L. 104-330, title IV, § 403, Oct. 26, 1996, 110 Stat. 4039.)

EFFECTIVE DATE

Section effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104-330, set out as a note under section 4101 of this title.

§ 4164. Performance reports**(a) Requirement**

For each fiscal year, each recipient shall—

- (1) review the progress it has made during such fiscal year in carrying out the Indian housing plan (or plans) for the Indian tribes for which it administers grant amounts; and
- (2) submit a report to the Secretary (in a form acceptable to the Secretary) describing the conclusions of the review.

(b) Content

Each report under this section for a fiscal year shall—

- (1) describe the use of grant amounts provided to the recipient for such fiscal year;
- (2) assess the relationship of such use to the goals identified in the Indian housing plan of the grant beneficiary;
- (3) indicate the programmatic accomplishments of the recipient; and
- (4) describe the manner in which the recipient would change its programs as a result of its experiences.

(c) Submission

The Secretary shall establish dates for submission of reports under this section, and review such reports and make such recommendations as the Secretary considers appropriate to carry out the purposes of this chapter.

(d) Public availability

A recipient preparing a report under this section shall make the report publicly available to

the citizens in the jurisdiction of the recipient in sufficient time to permit such citizens to comment on such report prior to its submission to the Secretary, and in such manner and at such times as the recipient may determine. The report shall include a summary of any comments received by the grant beneficiary or recipient from citizens in its jurisdiction regarding its program.

(Pub. L. 104-330, title IV, § 404, Oct. 26, 1996, 110 Stat. 4040.)

EFFECTIVE DATE

Section effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104-330, set out as a note under section 4101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4163, 4165 of this title.

§ 4165. Review and audit by Secretary**(a) Annual review**

The Secretary shall, not less than on an annual basis, make such reviews and audits as may be necessary or appropriate to determine—

- (1) whether the recipient has carried out its eligible activities in a timely manner, has carried out its eligible activities and certifications in accordance with the requirements and the primary objectives of this chapter and with other applicable laws, and has a continuing capacity to carry out those activities in a timely manner;
- (2) whether the recipient has complied with the Indian housing plan of the grant beneficiary; and
- (3) whether the performance reports under section 4164 of this title of the recipient are accurate.

Reviews under this section shall include, insofar as practicable, onsite visits by employees of the Department of Housing and Urban Development.

(b) Report by Secretary

The Secretary shall give a recipient not less than 30 days to review and comment on a report under this subsection. After taking into consideration the comments of the recipient, the Secretary may revise the report and shall make the comments of the recipient and the report, with any revisions, readily available to the public not later than 30 days after receipt of the comments of the recipient.

(c) Effect of reviews

The Secretary may make appropriate adjustments in the amount of the annual grants under this chapter in accordance with the findings of the Secretary pursuant to reviews and audits under this section. The Secretary may adjust, reduce, or withdraw grant amounts, or take other action as appropriate in accordance with the reviews and audits of the Secretary under this section, except that grant amounts already expended on affordable housing activities may not be recaptured or deducted from future assistance provided on behalf of an Indian tribe.

(Pub. L. 104-330, title IV, § 405, Oct. 26, 1996, 110 Stat. 4040.)

EFFECTIVE DATE

Section effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104-330, set out as a note under section 4101 of this title.

§ 4166. GAO audits

To the extent that the financial transactions of Indian tribes and recipients of grant amounts under this chapter relate to amounts provided under this chapter, such transactions may be audited by the Comptroller General of the United States under such rules and regulations as may be prescribed by the Comptroller General. The representatives of the General Accounting Office shall have access to all books, accounts, records, reports, files, and other papers, things, or property belonging to or in use by such tribes and recipients pertaining to such financial transactions and necessary to facilitate the audit.

(Pub. L. 104-330, title IV, § 406, Oct. 26, 1996, 110 Stat. 4041.)

EFFECTIVE DATE

Section effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104-330, set out as a note under section 4101 of this title.

§ 4167. Reports to Congress**(a) In general**

Not later than 90 days after the conclusion of each fiscal year in which assistance under this chapter is made available, the Secretary shall submit to the Congress a report that contains—

- (1) a description of the progress made in accomplishing the objectives of this chapter;
- (2) a summary of the use of funds available under this chapter during the preceding fiscal year; and
- (3) a description of the aggregate outstanding loan guarantees under subchapter VI of this chapter.

(b) Related reports

The Secretary may require recipients of grant amounts under this chapter to submit to the Secretary such reports and other information as may be necessary in order for the Secretary to make the report required by subsection (a) of this section.

(Pub. L. 104-330, title IV, § 407, Oct. 26, 1996, 110 Stat. 4041.)

EFFECTIVE DATE

Section effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104-330, set out as a note under section 4101 of this title.

SUBCHAPTER V—TERMINATION OF ASSISTANCE FOR INDIAN TRIBES UNDER INCORPORATED PROGRAMS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 4152 of this title.

§ 4181. Termination of Indian housing assistance under United States Housing Act of 1937**(a) Termination of assistance**

After September 30, 1997, financial assistance may not be provided under the United States

Housing Act of 1937 [42 U.S.C. 1437 et seq.] or pursuant to any commitment entered into under such Act, for Indian housing developed or operated pursuant to a contract between the Secretary and an Indian housing authority, unless such assistance is provided from amounts made available for fiscal year 1997 and pursuant to a commitment entered into before September 30, 1997.

(b) Termination of restrictions on use of Indian housing

After September 30, 1997, any housing developed or operated pursuant to a contract between the Secretary and an Indian housing authority pursuant to the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.] shall not be subject to any provision of such Act or any annual contributions contract or other agreement pursuant to such Act, but shall be considered and maintained as affordable housing for purposes of this chapter.

(Pub. L. 104-330, title V, § 502, Oct. 26, 1996, 110 Stat. 4043.)

REFERENCES IN TEXT

The United States Housing Act of 1937, referred to in text, is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93-383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 653, which is classified generally to chapter 8 (§ 1437 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of Title 42 and Tables.

This chapter, referred to in subsec. (b), was in the original “this Act”, meaning Pub. L. 104-330, Oct. 26, 1996, 110 Stat. 4016, known as the Native American Housing Assistance and Self-Determination Act of 1996. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of this title and Tables.

EFFECTIVE DATE

Section 508 of Pub. L. 104-330 provided that: “Sections 502, 503, and 507 [25 U.S.C. 4181, 4182, 4183] shall take effect on the date of the enactment of this Act [Oct. 26, 1996].”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4183 of this title.

§ 4182. Termination of new commitments for rental assistance

After September 30, 1997, financial assistance for rental housing assistance under the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.] may not be provided to any Indian housing authority or tribally designated housing entity, unless such assistance is provided pursuant to a contract for such assistance entered into by the Secretary and the Indian housing authority before such date. Any such assistance provided pursuant to such a contract shall be governed by the provisions of the United States Housing Act of 1937 (as in effect before the date of the effectiveness of this chapter) and the provisions of such contract.

(Pub. L. 104-330, title V, § 503, Oct. 26, 1996, 110 Stat. 4043.)

REFERENCES IN TEXT

The United States Housing Act of 1937, referred to in text, is act Sept. 1, 1937, ch. 896, as revised generally by

Pub. L. 93-383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 653, which is classified generally to chapter 8 (§ 1437 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of Title 42 and Tables.

For the date of the effectiveness of this chapter, referred to in text, as Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104-330, set out as an Effective Date note under section 4101 of this title.

EFFECTIVE DATE

Section effective Oct. 26, 1996, see section 508 of Pub. L. 104-330, set out as a note under section 4181 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4183 of this title.

§ 4183. Savings provision

(a) Existing rights and duties

Except as provided in sections 4181 and 4182 of this title, this chapter may not be construed to affect the validity of any right, duty, or obligation of the United States or other person arising under or pursuant to any commitment or agreement lawfully entered into before October 1, 1997, under the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.], subtitle D of title IV of the Cranston-Gonzalez National Affordable Housing Act [42 U.S.C. 12899 et seq.], title II of the Cranston-Gonzalez National Affordable Housing Act [42 U.S.C. 12721 et seq.], title IV of the Stewart B. McKinney Homeless Assistance Act [42 U.S.C. 11361 et seq.], or section 2 of the HUD Demonstration Act of 1993.

(b) Obligations under repealed provisions

Notwithstanding the amendments made by this subchapter, any obligation of the Secretary made under or pursuant to subtitle D of title IV of the Cranston-Gonzalez National Affordable Housing Act [42 U.S.C. 12899 et seq.], title II of the Cranston-Gonzalez National Affordable Housing Act [42 U.S.C. 12721 et seq.], title IV of the Stewart B. McKinney Homeless Assistance Act [42 U.S.C. 11361 et seq.], or section 2 of the HUD Demonstration Act of 1993 shall continue to be governed by the provisions of such Acts (as in effect before the date of the effectiveness of the amendments made by this subchapter).

(Pub. L. 104-330, title V, § 507, Oct. 26, 1996, 110 Stat. 4045.)

REFERENCES IN TEXT

The United States Housing Act of 1937, referred to in subsec. (a), is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93-383, title II, Aug. 22, 1974, 88 Stat. 653, which is classified generally to chapter 8 (§ 1437 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of Title 42 and Tables.

The Cranston-Gonzalez National Affordable Housing Act, referred to in text, is Pub. L. 101-625, Nov. 28, 1990, 104 Stat. 4079, as amended. Title II of the Act, known as the HOME Investment Partnerships Act, is classified principally to subchapter II (§ 12721 et seq.) of chapter 130 of Title 42. Subtitle D of title IV of the Act is classified generally to part C (§ 12899 et seq.) of subchapter IV of chapter 130 of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 12701 of Title 42 and Tables.

The Stewart B. McKinney Homeless Assistance Act, referred to in text, is Pub. L. 100-77, July 22, 1987, 101 Stat. 482, as amended. Title IV of the Act is classified principally to subchapter IV (§ 11361 et seq.) of chapter 119 of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 11301 of Title 42 and Tables.

Section 2 of the HUD Demonstration Act of 1993, referred to in text, is section 2 of Pub. L. 103-120, Oct. 27, 1993, 107 Stat. 1144, which was set out as a note under section 11301 of Title 42 prior to repeal by Pub. L. 103-120, § 2(g).

This subchapter, referred to in subsec. (b), was in the original “this title”, meaning title V of Pub. L. 104-330, which enacted this subchapter and section 12899h-1 of Title 42, amended sections 1437a, 1437c to 1437e, 1437g, 1437i, 1437n, 1437u to 1437x, 1437aaa-5, 1437aaa-6, 1439, 11371 to 11376, 11382, 11401, 11403g, 11408, 11903a, 12747, and 12838 of Title 42, repealed sections 1437aa to 1437ee of Title 42, enacted provisions set out as notes under sections 11371, 12747, and 12899h-1 of Title 42, amended provisions set out as a note under section 11301 of Title 42, and repealed provisions set out as a note under section 1701z-6 of Title 12, Banks and Banking. For complete classification of title V to the Code, see Tables.

The date of the effectiveness of the amendments made by this subchapter, referred to in subsec. (b), means the effective date of the amendments made by title V of Pub. L. 104-330, which is Oct. 1, 1997, except as otherwise expressly provided. See section 107 of Pub. L. 104-330, set out as an Effective Date note under section 4101 of this title.

EFFECTIVE DATE

Section effective Oct. 26, 1996, see section 508 of Pub. L. 104-330, set out as a note under section 4181 of this title.

SUBCHAPTER VI—FEDERAL GUARANTEES FOR FINANCING FOR TRIBAL HOUSING ACTIVITIES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 4131, 4167 of this title.

§ 4191. Authority and requirements

(a) Authority

To such extent or in such amounts as provided in appropriations Acts, the Secretary may, subject to the limitations of this subchapter (including limitations designed to protect and maintain the viability of rental housing units owned or operated by the recipient that were developed under a contract between the Secretary and an Indian housing authority pursuant to the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.]), and upon such terms and conditions as the Secretary may prescribe, guarantee and make commitments to guarantee, the notes or other obligations issued by Indian tribes or tribally designated housing entities with tribal approval, for the purposes of financing affordable housing activities described in section 4132 of this title.

(b) Lack of financing elsewhere

A guarantee under this subchapter may be used to assist an Indian tribe or housing entity in obtaining financing only if the Indian tribe or housing entity has made efforts to obtain such financing without the use of such guarantee and cannot complete such financing consistent with the timely execution of the program plans without such guarantee.

(c) Terms of loans

Notes or other obligations guaranteed pursuant to this subchapter shall be in such form and denominations, have such maturities, and be subject to such conditions as may be prescribed by regulations issued by the Secretary. The Secretary may not deny a guarantee under this subchapter on the basis of the proposed repayment period for the note or other obligation, unless the period is more than 20 years or the Secretary determines that the period causes the guarantee to constitute an unacceptable financial risk.

(d) Limitation on outstanding guarantees

No guarantee or commitment to guarantee shall be made with respect to any note or other obligation if the total outstanding notes or obligations of the issuer guaranteed under this subchapter (excluding any amount defeased under the contract entered into under section 4192(a)(1) of this title) would thereby exceed an amount equal to 5 times the amount of the grant approval for the issuer pursuant to subchapter III of this chapter.

(Pub. L. 104-330, title VI, § 601, Oct. 26, 1996, 110 Stat. 4046.)

REFERENCES IN TEXT

The United States Housing Act of 1937, referred to in subsec. (a), is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93-383, title II, Aug. 22, 1974, 88 Stat. 653, which is classified generally to chapter 8 (§ 1437 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of Title 42 and Tables.

EFFECTIVE DATE

Section 606 of Pub. L. 104-330 provided that: "This title [enacting this subchapter] shall take effect on the date of the enactment of this Act [Oct. 26, 1996]."

§ 4192. Security and repayment**(a) Requirements on issuer**

To assure the repayment of notes or other obligations and charges incurred under this subchapter and as a condition for receiving such guarantees, the Secretary shall require the Indian tribe or housing entity issuing such notes or obligations to—

(1) enter into a contract, in a form acceptable to the Secretary, for repayment of notes or other obligations guaranteed under this subchapter;

(2) pledge any grant for which the issuer may become eligible under this chapter;

(3) demonstrate that the extent of such issuance and guarantee under this subchapter is within the financial capacity of the tribe and is not likely to impair the ability to use grant amounts under subchapter I of this chapter, taking into consideration the requirements under section 4133(b) of this title; and

(4) furnish, at the discretion of the Secretary, such other security as may be deemed appropriate by the Secretary in making such guarantees, including increments in local tax receipts generated by the activities assisted under this chapter or disposition proceeds from the sale of land or rehabilitated property.

(b) Repayment from grant amounts

Notwithstanding any other provision of this chapter—

(1) the Secretary may apply grants pledged pursuant to subsection (a)(2) of this section to any repayments due the United States as a result of such guarantees; and

(2) grants allocated under this chapter for an Indian tribe or housing entity (including program income derived therefrom) may be used to pay principal and interest due (including such servicing, underwriting, and other costs as may be specified in regulations issued by the Secretary) on notes or other obligations guaranteed pursuant to this subchapter.

(c) Full faith and credit

The full faith and credit of the United States is pledged to the payment of all guarantees made under this subchapter. Any such guarantee made by the Secretary shall be conclusive evidence of the eligibility of the obligations for such guarantee with respect to principal and interest, and the validity of any such guarantee so made shall be incontestable in the hands of a holder of the guaranteed obligations.

(Pub. L. 104-330, title VI, § 602, Oct. 26, 1996, 110 Stat. 4046.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (b), was in the original "this Act", meaning Pub. L. 104-330, Oct. 26, 1996, 110 Stat. 4016, known as the Native American Housing Assistance and Self-Determination Act of 1996. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of this title and Tables.

EFFECTIVE DATE

Section effective Oct. 26, 1996, see section 606 of Pub. L. 104-330, set out as a note under section 4191 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4191 of this title.

§ 4193. Payment of interest

The Secretary may make, and contract to make, grants, in such amounts as may be approved in appropriations Acts, to or on behalf of an Indian tribe or housing entity issuing notes or other obligations guaranteed under this subchapter, to cover not to exceed 30 percent of the net interest cost (including such servicing, underwriting, or other costs as may be specified in regulations of the Secretary) to the borrowing entity or agency of such obligations. The Secretary may also, to the extent approved in appropriations Acts, assist the issuer of a note or other obligation guaranteed under this subchapter in the payment of all or a portion of the principal and interest amount due under the note or other obligation, if the Secretary determines that the issuer is unable to pay the amount because of circumstances of extreme hardship beyond the control of the issuer.

(Pub. L. 104-330, title VI, § 603, Oct. 26, 1996, 110 Stat. 4047.)

EFFECTIVE DATE

Section effective Oct. 26, 1996, see section 606 of Pub. L. 104-330, set out as a note under section 4191 of this title.

§ 4194. Training and information

The Secretary, in cooperation with eligible public entities, shall carry out training and information activities with respect to the guarantee program under this subchapter.

(Pub. L. 104-330, title VI, § 604, Oct. 26, 1996, 110 Stat. 4047.)

EFFECTIVE DATE

Section effective Oct. 26, 1996, see section 606 of Pub. L. 104-330, set out as a note under section 4191 of this title.

§ 4195. Limitations on amount of guarantees**(a) Aggregate fiscal year limitation**

Notwithstanding any other provision of law and subject only to the absence of qualified applicants or proposed activities and to the authority provided in this subchapter, to the extent approved or provided in appropriations Acts, the Secretary may enter into commitments to guarantee notes and obligations under this subchapter with an aggregate principal amount not to exceed \$400,000,000 for each of fiscal years 1997, 1998, 1999, 2000, and 2001.

(b) Authorization of appropriations for credit subsidy

There are authorized to be appropriated to cover the costs (as such term is defined in section 661a of title 2) of guarantees under this subchapter such sums as may be necessary for each of fiscal years 1997, 1998, 1999, 2000, and 2001.

(c) Aggregate outstanding limitation

The total amount of outstanding obligations guaranteed on a cumulative basis by the Secretary pursuant to this subchapter shall not at any time exceed \$2,000,000,000 or such higher amount as may be authorized to be appropriated for this subchapter for any fiscal year.

(d) Fiscal year limitations on tribes

The Secretary shall monitor the use of guarantees under this subchapter by Indian tribes. If the Secretary finds that 50 percent of the aggregate guarantee authority under subsection (c) of this section has been committed, the Secretary may—

- (1) impose limitations on the amount of guarantees any one Indian tribe may receive in any fiscal year of \$50,000,000; or
- (2) request the enactment of legislation increasing the aggregate outstanding limitation on guarantees under this subchapter.

(Pub. L. 104-330, title VI, § 605, Oct. 26, 1996, 110 Stat. 4047.)

EFFECTIVE DATE

Section effective Oct. 26, 1996, see section 606 of Pub. L. 104-330, set out as a note under section 4191 of this title.

SUBCHAPTER VII—OTHER HOUSING ASSISTANCE FOR NATIVE AMERICANS**§ 4211. 50-year leasehold interest in trust or restricted lands for housing purposes****(a) Authority to lease**

Notwithstanding any other provision of law, any trust or restricted Indian lands, whether tribally or individually owned, may be leased by the Indian owners, subject to the approval of the affected Indian tribe and the Secretary of the Interior, for housing development and residential purposes.

(b) Term

Each lease pursuant to subsection (a) of this section shall be for a term not exceeding 50 years.

(c) Rule of construction

This section may not be construed to repeal, limit, or affect any authority to lease any trust or restricted Indian lands that—

- (1) is conferred by or pursuant to any other provision of law; or
- (2) provides for leases for any period exceeding 50 years.

(d) Self-implementation

This section is intended to be self-implementing and shall not require the issuance of any rule, regulation, or order to take effect as provided in section 705.

(Pub. L. 104-330, title VII, § 702, Oct. 26, 1996, 110 Stat. 4050.)

REFERENCES IN TEXT

Section 705, referred to in subsec. (d), is section 705 of Pub. L. 104-330, which is set out as an Effective Date note below.

EFFECTIVE DATE

Section 705 of title VII of Pub. L. 104-330 provided that: “This title [enacting this subchapter and amending sections 1715z-13a and 1721 of Title 12, Banks and Banking, and sections 11902 to 11905 of Title 42, The Public Health and Welfare] and the amendments made by this title (but not including the amendments made by section 704 [amending sections 11902 to 11905 of Title 42]) shall take effect on the date of the enactment of this Act [Oct. 26, 1996].”

§ 4212. Training and technical assistance

There are authorized to be appropriated for assistance for a national organization representing Native American housing interests for providing training and technical assistance to Indian housing authorities and tribally designated housing entities such sums as may be necessary for each of fiscal years 1997, 1998, 1999, 2000, and 2001.

(Pub. L. 104-330, title VII, § 703, Oct. 26, 1996, 110 Stat. 4051.)

EFFECTIVE DATE

Section effective Oct. 26, 1996, see section 705 of Pub. L. 104-330, set out as a note under section 4211 of this title.